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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/692,460	10/22/2003	Gregory Berrevoets	78485	7241

22242 7590 01/19/2007
FITCH EVEN TABIN AND FLANNERY
120 SOUTH LA SALLE STREET
SUITE 1600
CHICAGO, IL 60603-3406

EXAMINER

REIMERS, ANNETTE R

ART UNIT	PAPER NUMBER
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3733

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	01/19/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

NT

Office Action Summary	Application No. 10/692,460	Applicant(s) BERREVOETS ET AL.	
	Examiner Annette R. Reimers	Art Unit 3733	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 October 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) 21-23 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 and 24-27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- 1. ☐ Certified copies of the priority documents have been received.
 - 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 - 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>10/22/03, 01/26/04</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

Applicant's election without traverse of Species, a, figures 1-8 and the clamp of figure 9, in the reply filed on October 12, 2005 is acknowledged. Examiner further acknowledges that applicant believes that claims 1-20 and 24-27, read on the elected species. Examiner agrees with applicant that claims 1-20 and 24-27, read on the elected species of figures 1-8 and the clamp of figure 9. Examiner further agrees with applicant that claims 1-16 and 24-27 appear to be generic.

Claims 21-23 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on October 12, 2005.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-20 and 24-27 are rejected under 35 U.S.C. 102(b) as being anticipated by Duff (US Patent Number 4,611,582).

Duff discloses a connecting member, e.g. 10, for securing spinal rods mounted to spinal vertebrae, the connecting member comprising a central span, and a pair of connecting ends, each end including a contact, e.g. 40, a locking member, e.g. 42 and 40, such that the locking member and contact form a spinal rod seat with locked and unlocked positions, and a cam member, e.g. 52 and 48, connected to the locking member and rotatable against a cam surface of the connecting end, wherein the contact for seating the connecting end on the spinal rod is an arcuate surface, wherein the locking member has an arcuate face, wherein the connecting end further includes a split ring spring retention member, e.g. 53, located around the cam member, wherein the camming member is located in a bore in the connecting end (see figure 5), and the bore includes a pair of arcuate camming surfaces (see figure 5), wherein the cam member has an annular channel recess, e.g. 57, and the locking member is secured in the recess via 48, wherein the central span includes a cross rod, e.g. 28, with beveled lateral surfaces, e.g. threads, 29, having a central longitudinal axis connected to one connecting end, a rod receiving member, e.g. 34, having a central longitudinal axis

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connected to the other connecting end, the rod receiving member including an internal cavity for receiving the cross rod (see figure 5), side openings, e.g. 62, a pivotal clamp device, e.g. 31-33, for clamping against the cross rod received in the rod receiving member, and a sleeve, e.g. 37, for clamping the clamp device against the cross rod, wherein the internal cavity of the rod receiving member receives the cross rod such that the cross rod may be adjustably inserted, via threads, in the cavity for varying the length of the connecting member (see figure 5), the cross rod may be adjustably rotated in the rod receiving member, via threads, around a longitudinal axis of the cross rod (see figure 5), and the cross rod may be pivoted relative to the rod receiving member (see figure 5), wherein the clamp device includes an arcuate inner surface for mating with the external surface of the cross rod (see figure 5), and the cross rod may be rotatably adjusted relative to the clamp device, via threads, wherein the cross rod includes a protrusion, e.g. threads, for retaining the crossrod within the rod receiving member, wherein the sleeve includes an internal structure having a shoulder portion that imparts a direct compression force on the clamp device (see column 3, lines 58-62), wherein the rod receiving member includes a terminal surface, e.g. threads, for limiting the position of the clamp device (see figure 5).

It is noted that the preamble of claim 1 recites "A connecting member for securing spinal rods mounted to spinal vertebrae" which amounts to an intended use recitation. It has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed

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apparatus from a prior art apparatus satisfying the claimed structural limitations. Ex parte Masham, 2 USPQ2d 1647 (1987).

Furthermore, with regard to the statement of intended use and other functional statements, they do not impose any structural limitations on the claims distinguishable over Duff., which is capable of being used as claimed if one so desires to do so. *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963). Moreover, the law of anticipation does not require that the reference "teach" what the subject patent teaches, but rather it is only necessary that the claims under attack "read on" something in the reference. *Kalman v. Kimberly Clark Corp.*, 218 USPQ 781 (CCPA 1983).

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See PTO 892 for art cited of interest.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Annette R. Reimers whose telephone number is (571) 272-7135. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on (571) 272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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EDUARDO C. ROBERT
SUPERVISORY PATENT EXAMINER